IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 698 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

KISHORBHAI G SHAH

Versus

R.V. BOLUR ASST COMMR

Appearance:

MR MB GANDHI for Petitioner

RULE SERVED for Respondent No. 1

PMR AJ DESAI APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/08/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the parties. By way of this revision application, the petitioner challenges the judgment and order convicting and

sentencing him to simple imprisonment for one month and fine of Rs.500 as also the judgment and order of the learned Sessions Court dismissing his appeal. The petitioner is convicted for the offence under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970. The complaint against the petitioner filed by the Assistant Labour Commissioner was to the effect that the petitioner had not submitted the returns in the prescribed form within the prescribed time in accordance with Rule 82 (1) of the Contact Labour (Regulation and Abolition) Central Rules, 1971. The complaint for the offence dated 10.1.1990 was made on 23.10.1990 and the cognizance of the offence was taken on 28.1.1991. It is submitted on behalf of the petitioner that the returns in question in respect of the period from January to June were required to be filed before 31st July, 1990; and taking 1st August, 1990 as the date of knowledge of non-filing of the returns, taking of cognizance on 28.1.1991 was beyond the period of limitation of three months prescribed under Section 27 of the Act. However, it is submitted by the learned Additional Public Prosecutor that the complaint is dated 20.3.1990 and hence made within the period of limitation and the date of taking of cognizance is immaterial.

2. It is also pointed out on behalf of the petitioner that the learned Judge of the trial Court has not considered the aspect of releasing the petitioner on probation under Section 360 of the Cr.P.C. although a minor technical offence was confessed at the first opportunity by the petitioner without any history or record of any earlier offence. Going through the original record and proceedings which was called for, it appears that it was only on 28.1.1991 that the cognizance was taken, the petitioner was heard and the offence was admitted with the only request that, as the petitioner was prepared to pay the fine, no sentence may be imposed. It appears that immediately upon the impugned order of sentence passed on the same day, the petitioner has applied for bail and has remained on bail till now.

3. In these facts and circumstances, the learned Addl. Public Prosecutor has fairly conceded that the petitioner could have been given the benefit of probation and the sentence of imprisonment for one month is too harsh and not called for in the circumstances of the case. In view of the fact that no other offence is reported against the petitioner and he has been charged and sentenced on the same day on the basis of his candid admission of lapse of a technical nature, the ends of justice would be met if, in lieu of imprisonment, only

the maximum amount of fine is imposed. Accordingly, under the special facts and circumstances of the case, the impugned order of sentence is substituted by imposition of fine of Rs.1000 out of which Rs.500 is already paid by him under the impugned order. With this direction, the petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(KMG Thilake)

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